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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/582,432

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Wilfried Maier

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DOBRUSIN & THENNISCH PC
29 W LAWRENCE ST
SUITE 210
PONTIAC, MI 48342

EXAMINER

CLARK, MAYA ANGELICA

ART UNIT

PAPER NUMBER

3742

MAIL DATE

DELIVERY MODE

05/20/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/582,432	Applicant(s) MAIER, WILFRIED	
	Examiner MAYA CLARK	Art Unit 3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☒ Claim(s) 5 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 June 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>6/9/2006; 7/10/2006; 3/27/2007</u> . | 6) <input checked="" type="checkbox"/> Other: <u>See Continuation Sheet</u> . |

Continuation of Attachment(s) 6). Other: Foreign patent literature-6/4/1997; 8/3/1995;3/25/1999 .

DETAILED ACTION

Drawings

1. The drawings are objected to because of the following informality: the rolled food product slice as shown in figures 1 and 5 needs to be labeled. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim. For example optionally a bending means may be different from optionally having a bending means. Furthermore, optionally bends the food product slice may be different from optionally bending the food product slice. The recitation of "a means (6)" at line 7 also renders the claim indefinite because it does not provide essential structural limitation for bending the food product slice. The claim is incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01.

3. Additionally, in claims 1 and 10, the actual conveying means has not been disclosed.
4. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the

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feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims.

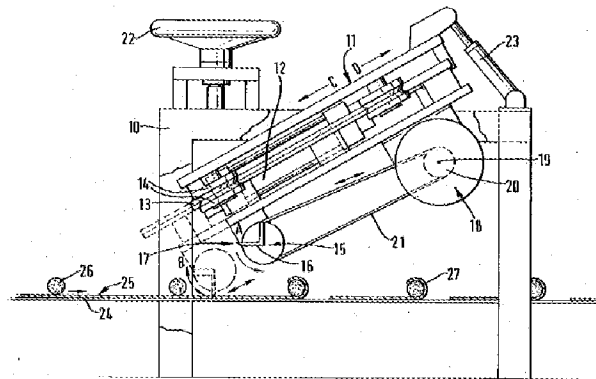
Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 2 recites the broad recitation the bending means (4) is a roller, and the claim also recites preferably height adjustable which is the narrower statement of the range/limitation. In the present instance, claim 6 recites the broad recitation the means (6) consists of a flat and flexible material, and the claim also recites preferably a cloth which is the narrower statement of the range/limitation.

5. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. What bending means is arranged beneath the means (6).
6. Regarding claims 7, 9, and 12, the phrase "and/or" renders the claims indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 102

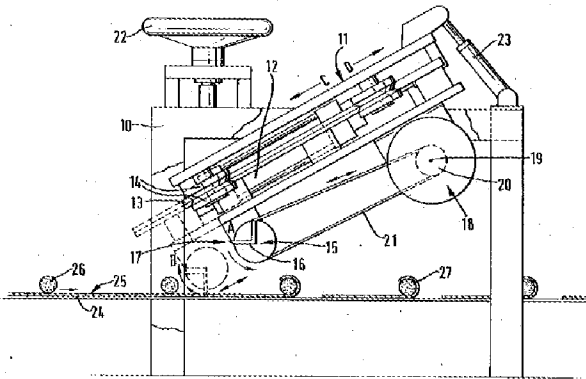
7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –



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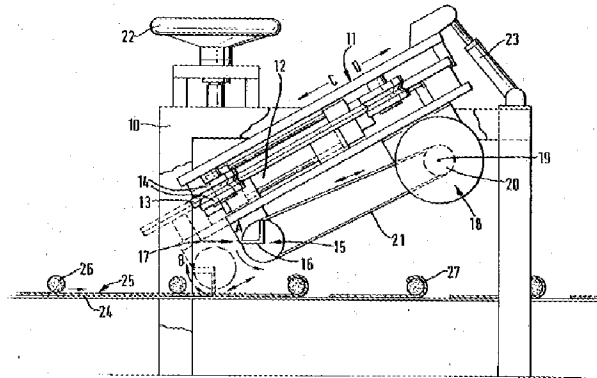
Regarding claim 3, Svengren discloses a device characterized in that the bending means (B portion) is arranged between a slicer (16 and 17) and the conveying means (24) in the trajectory i.e. path of a severed food product slice (25, 27).



Regarding claim 5, Svengren discloses a rolling device (15, 18-21) capable of bending i.e folding and then rolling the food product slice (col.1, lines 21-23; col.2, lines 36-47 and 53-68; col. 3, lines 1-8).

Regarding claim 8, Svengren discloses a belt (21) which aids in the bending and rolling of the food product slice.

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Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Svengren in view of Beier (WO 9520322 A1).

Svengren fails to disclose a roller that is height adjustable and or drivable.

Beier discloses a food rolling device consisting of rollers that are height adjustable and is essentially being driven by the corresponding conveyor belt system (entire abstract and page 4 paragraph 1). The fact that the rollers are drivable and adjustable allows for the operator to have control over the food product rolling process.

It would have been obvious to one of ordinary skill in the art to modify the Svengren reference to include the Beier reference since the Beier reference

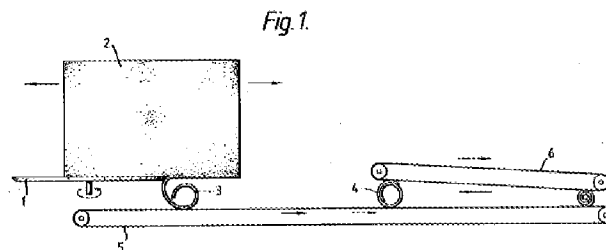
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discloses rollers that are height adjustable and drivable in order to provide more control over the food product bending and rolling processes from start to finish.

11. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Svengren in view of Barnes (US 4961949).

Svengren fails to disclose a device characterized in that the bending means is arranged beneath the means (6.)

Barnes discloses a food rolling device consisting of a conveyor system (5) arranged beneath another conveyor system (6). Both bending means i.e. conveyor systems work together to bend and roll the food product slices (see figure below and col.3, lines 24-32). The Barnes device is effective in carefully rolling food products such as cheeses in order to prevent breakage during the bending and subsequent rolling processes (col.1, lines11-21).



It would have been obvious to one of ordinary skill in the art to modify the Svengren reference to include the Barnes reference since the Barnes reference provides an easy method for rolling up those food products that are prone to easy breakage during the bending and rolling processes.

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1. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Svengren in view of Zimmermann et al (US 5455053), hereinafter Zimmermann.

Regarding claim 6, Svengren fails to disclose a device characterized in that the means consists of a flat and flexible material and is preferably a cloth.

Zimmermann discloses a food slicing and rolling device that uses a flat and flexible support material which aids in the rolling of a food product slice (col.1, lines 10-14 and 33-37; col.2, lines 53-56; col.3, lines 4-10). The support material is versatile in that it makes the food product roll more complete.

It would have been obvious to one of ordinary skill in the art to modify the Svengren reference to include the Zimmermann reference since the Zimmermann reference provides a good support material for efficiently aiding in the rolling of food product slices.

Regarding claim 7, Svengren fails to disclose a device characterized in that the length and/or weight of the flexible material influences the size of the roll.

Zimmermann discloses a food slicing and rolling device that uses a flat and flexible support material which aids in the rolling of a food product slice (col.1, lines 10-14 and 33-37; col.2, lines 53-56; col.3, lines 4-10). The support material can be cut to the desired length in order to influence the size of the roll. In other words, the use of longer support material would cause the food product slice roll to be more tighter (col.1, lines 53-61).

It would have been obvious to one of ordinary skill in the art to modify the Svengren reference to include the Zimmermann reference since the

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Zimmermann reference uses a support material with an adjustable length size which would positively influence the tightness of the food product slice roll.

2. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Svengren in view of Diete (US 5724787).

Regarding claim 11, Svengren fails to disclose a food rolling device characterized in that the finished food product rolls are rolled into packaging.

Zimmermann discloses a food slicing and rolling device that deposits the finished rolled food product slices into packages (col.1, lines 43-51; col. 3, lines 16-20).

The packaging provides for easy separation of the individual slices (col.1, lines 38-41).

Regarding claim 12, Svengren fails to disclose a food rolling device characterized in that the rolls are packaged individually and/or in groups.

Zimmermann discloses a food slicing and rolling device that packages groups of finished food product slices into a single package (col.3, lines 52-60). The individual food product slice rolls can be grouped adjacent to one another or stacked one upon the other.

It would have been obvious to one of ordinary skill in the art to modify the Svengren reference to include the Zimmermann reference since the Zimmermann reference has the means to package the food product slices in such a way as to prevent each roll from touching each other which would prevent each roll from becoming possibly deformed.

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Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MAYA CLARK whose telephone number is (571)270-5605. The examiner can normally be reached on Monday through Friday, 10 am to 6:00 pm (First Friday Off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, TU HOANG can be reached on (571)272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MAC
AU 3742
/TU B HOANG/
Supervisory Patent Examiner, Art Unit 3742